

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 2nd day of August, two thousand and six.

PRESENT:

HON. BARRINGTON D. PARKER,
HON. REENA RAGGI,
HON. RICHARD C. WESLEY,
Circuit Judges.

Wolter Oroh,

Petitioner,

v.

No. 05-5251-ag
NAC

Alberto R. Gonzales,

Respondent.

FOR PETITIONER: Ronald S. Salomon, New York, New York.

FOR RESPONDENT: Donald J. DeGabrielle, Jr., United States Attorney, Judy A. Robbins, Assistant United States Attorney, Houston, Texas.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DENIED.

1 Wolter Oroh, through counsel, petitions for review of the BIA decision adopting and
2 affirming the decision of Immigration Judge (“IJ”) Robert Wiesel denying his application for
3 asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). We
4 assume the parties’ familiarity with the underlying facts and procedural history of the case.

5 Where, as here, the BIA issues an opinion that fully adopts the IJ’s decision, this Court
6 reviews the IJ’s decision. *See, e.g., Chun Gao v. Gonzales*, 424 F.3d 122, 124 (2d Cir. 2005);
7 *Secaida-Rosales v. INS*, 331 F.3d 297, 305 (2d Cir. 2003). This Court reviews agency findings
8 of fact under the substantial evidence standard, treating them as “conclusive unless any
9 reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. §
10 1252(b)(4)(B); *see Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

11 Title 8, Section 1158(a)(3) of the United States Code provides that no court shall have
12 jurisdiction to review the agency's finding that an asylum application was untimely under 8
13 U.S.C. § 1158(a)(2)(B), or its finding of neither changed nor extraordinary circumstances
14 excusing the untimeliness under 8 U.S.C. § 1158(a)(2)(D). Notwithstanding that provision,
15 however, this Court retains jurisdiction to review constitutional claims and “questions of law.” 8
16 U.S.C. § 1252(a)(2)(D). “Questions of law” include matters of statutory and regulatory
17 construction. *See Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 153-54 (2d Cir. 2006);
18 *Joaquin-Porras v. Gonzales*, 435 F.3d 172, 178-80 (2d Cir. 2006). Since Oroh challenges only
19 the merits of the IJ’s factual determinations we lack jurisdiction to review the one-year bar
20 determination.

21 With respect to Oroh’s claims for withholding of removal, the IJ was reasonable in
22 determining that inconsistencies between Oroh’s hearing testimony and his written application

1 regarding whether he had suffered past persecution in Indonesia as well as inconsistencies
2 between his testimony and witness's testimony with respect to how often he attended church,
3 undermined his claim of fear of future persecution on account of his Pentecostal Christian
4 religious beliefs. Additionally, Oroh testified that his family was Christian and that his father,
5 two brothers, and two sisters continued to reside in his hometown of Minato in Indonesia, and
6 that one sister lived in Jakarta. Because there is no evidence in the record that Oroh's family has
7 been abused on account of their Pentecostal faith, or for any other reason, the IJ was reasonable
8 in concluding that Oroh's testimony undermined his claim of fear of future persecution. *In re A-*
9 *E-M-*, 21 I. & N. Dec. 1157, 1160 (BIA 1998).

10 Finally, the IJ found that the record indicated that the Indonesian government has made
11 recent progress in promoting religious freedom and reducing violence against Christians. In
12 *Tian-Yong Chen v. INS*, 359 F.3d 121 (2d Cir. 2004), this Court warned against overreliance on
13 country reports and failure to consider countervailing evidence in deciding that an alien is
14 unlikely to suffer future persecution. 359 F.3d at 130. This Court presumes that an IJ has taken
15 into account all of the evidence before him, unless the record compellingly suggests otherwise.
16 *See Xiao Ji Chen*, 434 F.3d at 160 n.13. Here, the IJ clearly acknowledged in his decision that
17 Indonesia had experienced "setbacks with respect to religious freedom" and was not "in a pristine
18 condition in so far as religious tolerance is concerned," but also pointed out that the government
19 had made progress in cracking down on terrorists and extremists and attempting to reduce attacks
20 on Christians. The record shows that the IJ thoroughly reviewed Oroh's evidence, but did which
21 did not establish a reasonable possibility that he would be persecuted on account of his Christian
22 religion. The IJ's finding that Oroh failed to establish a well-founded fear based on his

1 Pentecostal religious beliefs is supported by substantial evidence in the record. Because there is
2 no evidence that Oroh would likely be tortured upon return to Indonesia, the IJ's denial of CAT
3 relief was also appropriate.

4 _____For the foregoing reasons, the petition for review is DENIED. Having completed our
5 review, any stay of removal that the Court previously granted in this petition is VACATED, and
6 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
7 request for oral argument in this petition is DENIED in accordance with Federal Rule of
8 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

9
10 FOR THE COURT:

11 Roseann B. MacKechnie, Clerk

12
13 By: _____

14 Oliva M. George, Deputy Clerk